

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

RYAN SCOTT JAMES PRICE,)	CV 05-24-H-CSO
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
STATE OF MONTANA,)	
)	
Defendant.)	
)	

Plaintiff Price has filed a Complaint pursuant to 42 U.S.C. § 1983 alleging that the statute under which he was convicted in Montana state court is unconstitutional. United States Magistrate Judge Carolyn S. Ostby conducted preliminary screening of the Complaint as required by 28 U.S.C. §§ 1915(e)(2) and 1915A(a). Under that statute, the court engages in a preliminary screening to assess the merits of the claims and identify cognizable claims, or dismiss the complaint or any portion thereof if the complaint is frivolous, malicious, or fails to state a claim upon which relief can be granted. 28 U.S.C. §§ 1915(e)(2), 1915A(b).

Judge Ostby issued Findings and Recommendations on November 15, 2005, in which she recommended dismissal of the Plaintiff's Complaint with prejudice. Judge Ostby concluded that the proper means of challenging his criminal conviction is through a petition for writ of habeas corpus, not through a suit under § 1983. See Heck v. Humphrey, 512 U.S. 477 (1994). Judge Ostby also noted that the State of Montana is immune from suit in federal court under the Eleventh Amendment, and that the state has not waived sovereign immunity.

Plaintiff Price did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

I can find no clear error with Judge Ostby's Findings and Recommendation (dkt #5) and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the Complaint is DISMISSED WITH PREJUDICE.

DATED this 23 day of May, 2006.

Donald W. Molloy, Chief Judge
United States District Court